

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RUSSELL ANDERSON,

Plaintiff,

Hon. Gordon J. Quist

v.

Case No. 1:08-CV-1070

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

/

**REPORT AND RECOMMENDATION**

This is an action pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), to review a final decision of the Commissioner of Social Security denying Plaintiff's claim for benefits. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's appeal be **dismissed without prejudice for failure to timely effect service.**

Plaintiff - with the benefit of counsel - initiated the present action on November 14, 2008. (Dkt. #1). On October 8, 2009, the Court, because Plaintiff had failed to effect service in this matter, ordered Plaintiff to "show cause why this matter should not be dismissed without prejudice for failure to timely effect service." Plaintiff was directed to respond to the Court's Order no later than October 16, 2009. Plaintiff has neither effected service on Defendant nor responded to the Court's Order to Show Cause.

Federal Rule of Civil Procedure 4(c) indicates that "[a] summons must be served together with a copy of the complaint." The time frame within which service must be effected is articulated in Rule 4(m), which provides that if service of the summons and complaint is not made upon a defendant

within 120 days after the filing of the complaint, “the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant.” If the plaintiff demonstrates good cause for such failure, however, “the court shall extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m); *see also, Bush v. City of Zeeland*, 2003 WL 22097837 at \*2 (6th Cir., Sep. 5, 2003) (citation omitted).

Considering Plaintiff’s lack of diligence in this matter, the undersigned recommends that Plaintiff’s action be dismissed without prejudice for failure to timely effect service.

### **CONCLUSION**

For the reasons articulated herein, the undersigned recommends that Plaintiff’s action be **dismissed without prejudice for failure to timely effect service.**

OBJECTIONS to this report and recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Date: October 21, 2009

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge